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HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

Yokohama, Japan
8 November 1948

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UNITED STATES OF AMERICA VS MASAYOSHI MURATA

Review of the Staff Judge Advocate

1. The attached record of trial of Masayoshi Murata at Yokohama, Japan, on 12 January 1948, by a Military Commission appointed by paragraph 1, Special Order No. 7, Headquarters Eighth Army, dated 9 January 1948, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Masayoshi Murata	DATE OF CONFINEMENT: 27 February 1947
AGE: 26	DATE OF ARRAIGNMENT: 12 January 1948
RESIDENCE: Yamanashi-ken, Kitakoma, Hinoharu Mura, Nagasaka, Kami-Jo 2035	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 1 day
RELATIVES: Brother, wife (R. 16)	DATE OF SENTENCE: 12 January 1948
EDUCATION: Graduate commercial school	SENTENCE: CHL for four (4) years
VOCATION: Not stated	CLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: Served in Japanese Navy from 1 December 1943 to 1 August 1945. Highest rank: Petty Officer, second class.	

2. Synopsis of Charge, Pleas, Findings, Legal Sufficiency and Sentence:

<u>Charge and Specifications</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Charge: Accused at times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.	NG	G	Yes
Sp 1: On or about 5 August 1944, at Ofuna PW Camp, accused did willfully and unlawfully mistreat William McFerren, Jr., an American PW, by forcing him to assume an unnatural position for a long period of time, by beating him and by otherwise abusing him.	NG	NG	---
Sp 2: On or about 5 September 1944, accused did willfully and unlawfully mistreat George E. Brown, an American PW, by beating and otherwise abusing him.	NG	G	Yes
Sp 3: In or about July 1944, accused did willfully and unlawfully mistreat numerous American and Allied PWs by forcing them to assume unnatural positions for a long period of time and by otherwise abusing them.	NG	Nol. prossed (R. 3)	---

Restricted

Sp 4: On or about 13 July 1944, on an occasion other than as described in Sp 3, accused did willfully and unlawfully mistreat numerous American and Allied PWs by forcing them to assume unnatural positions for a long period of time and by otherwise abusing them. NG

Nol prossed
(R. 3)

Sp 5: At divers times between 1 May 1944 and 31 November 1944, accused did willfully and unlawfully mistreat numerous American and Allied PWs by beating and otherwise abusing them. NG

G except for the words "and Allied" and of the excepted words, NG Yes

3. Summary of the Evidence:

a. General.

The defendant, Masayoshi Murata, a Petty Officer in the Imperial Japanese Navy, during all times covered by the charge and specifications, was a guard at the Ofuna Interrogation Center, a Prisoner of War Camp at Ofuna, Honshu, Japan. His nicknames were "The Termite" and "Bird-brain." (R. 10, 16; Ex. 1, 2, 3, 4, 5).

b. For the Prosecution:

As to Specification 1: Captain James Gowan Godwin, NZ Forces, a PW at Ofuna from 29 June 1944 to 15 January 1945, testified, in person, that about the middle of September 1944, early in the afternoon he saw Murata hit Lieutenant George E. Brown, USN, another PW, across the back with a club 3-1/2 feet x 2-1/2 inches at least six times with such force as to stagger Brown. This occurred near the corner of Barracks #3 at the Ofuna Camp and in the presence of two or three people who were with Murata (R. 12, 13). Commander John Allison Brown, USN, PW Commander at Ofuna, states in an affidavit (Ex. 5, p. 5) that on 5 September 1944 Murata found P Brown sleeping in a vacant room and took him out behind the barracks and struck him six times with a club the size of a baseball bat in the presence of two male guests of Murata.

As to Specification 5: PW Godwin testified in person:

(a) That in October 1944, while the PWs were waiting in the cell passage for evening inspection, the "Termite" slugged Lieutenant Arbuckle, USN, a PW, in the face with his fist three times (R. 10, 11).

(b) That at the end of August or in early September, 1944, at five or six o'clock in the evening, outside the PW barracks, the "Termite" made Lieutenant Colonel Walker, AC, a PW, stand at least one-half hour in an unnatural position known as the Ofuna crouch (described at R. 12), during which time he slugged PW Walker across the face with his closed fist at least four times, causing PW Walker to totter back against the barracks (R. 11, 12).

In an affidavit (Ex. 1) Captain William McFerren, AC, a PW at Ofuna from 6 January to 1 October 1944, states:

(c) That on 5 August 1944 Murata put him in the push-up position for two hours and when he showed signs of sagging hit him with a club 1-1/2 inches in diameter, finally kicked him in the groin and slugged him in the face.

(d) That on 29 August 1944, Murata slugged four prisoners and jabbed Lieutenant Nyrady, a PW, with a bayonet.

Restricted

(e) That on 19 July 1944, Murata slugged Lieutenant Harmon P. Sherry, a PW, with his fists and struck him eleven times with a baseball bat two inches in diameter.

(f) 1st Lieutenant Louis S. Zamperini, a PW at Ofuna from 18 September 1943 to October 1944, in an affidavit (Ex. 2) states he saw Murata hit PW's with his fist on six or seven occasions, not very hard and only once on each occasion.

(g) Kenneth O. Kelberg, ACMN, USN, a PW at Ofuna from 5 September 1943 to 10 September 1944, in an affidavit (Ex. 3), states that Murata and four other guards were the meanest at Ofuna and he felt many of their beatings.

(h) Major Donald W. Boyle, USMC, a PW at Ofuna from 5 March 1944 to 15 January 1945, states that "Birdbrain" participated in many beatings of PW's and that he lined PW's at attention and went up and down behind the rank beating the PW's with a baseball bat.

Commander Fitzgerald, a PW at Ofuna from 1 May 1943 to 15 January 1945, in an affidavit (Ex. 5), states:

(i) That on 4 July 1944 all PW's were made to do the Ofuna crouch punishment for 25 minutes and that Murata caused the trouble.

(j) That Murata almost daily would beat one PW or another.

(k) That on 13 July 1944 Murata made all the PW's of one barracks do the Ofuna crouch for twenty minutes because a piece of soap belonging to a guard was missing.

c. For the Defense:

The accused was advised of his rights by defense counsel and, in open court, by the Law Member, and elected to be sworn and testify in his own defense. He testified as follows:

As to Specification 1: Accused knew Lieutenant Brown and was warned that Brown was hard to handle and to be careful of him. That, while he was C.Q., he caught PW Brown sleeping in a vacant room and questioned him. Brown said he was not feeling well. Accused asked him why he did not report on sick call and PW Brown gave evasive answers. Accused reported the matter to Mori, a Petty Officer, Second Class, who was also acting as C.. Mori asked accused to get him a stick. Mori struck the PW twice with the stick and, later, accused struck Mori twice with the stick. There was no one present at the time except Mori (R. 16, 17, 45).

As to Specification 5: Answering specifically the evidence brought out by the Prosecution in support of the specification, as set forth above, the accused testified:

(a) That he did not know PW Arbuckle and that he did not recall any commotion in the cell passage while PW's were awaiting inspection as testified to by Captain Godwin (R. 19).

(b) That he did not remember PW Walker. That he did not make PW Walker do the Ofuna crouch and slug him with his fist across the face four or five times as testified to by Captain Godwin (R. 19).

(c) That he knew PW McFerren. That he never made McFerren assume the push-up position for two hours or hit him with a club or kick or slug him. That he never saw PW McFerren beaten while he was a guard (R. 16).

(p. 3 of 5, Masayoshi Murata, Case No. 238)

Restricted

Restricted

(d) That he wore a bayonet as part of his equipment (R. 17). That he did not jab Lieutenant Nyrady with a bayonet as PW McFerren stated.

(e) That he knew PW sherry but never struck him as PW McFerren stated (R. 18).

(f) That he did not strike six or seven men as PW Zamperini stated (R. 18).

(g) Not answered specifically.

(h) Not specifically answered.

(i) Not specifically answered.

(j) Accused stated that he never beat any PW except PW Brown (R. 23).

(k) Accused admits that, on orders of an NCO, Watanabe, a PC 2/c, his superior at the time, when it was discovered that a piece of soap had been stolen by a PW, he made the PW's assume the Ofuna crouch position for ten minutes (R. 19, 20, 21, 22).

4. Opinion:

The Commission was constituted by proper authority and had jurisdiction of the accused and the offenses alleged in the charge and specifications. The accused was sane at the time of the offenses alleged in the charge and specifications and at the time of the trial before the Commission. That the accused was ably defended by assigned defense counsel, cooperated in his own defense and, after proper advice by defense counsel and the Law Member of the Commission, testified in his own defense.

As to Specification 1, the beating of PW Brown is amply proved by the testimony of Captain Godwin (R. 10-13) and the affidavits of Commander Fitzgerald, PW Commander (Ex. 5, p. 5). The accused admitted beating Brown and, testifying in his own defense, the accused made no pretense that the beating he gave PW Brown was administered on direction of a superior officer (R. 17).

As to Specification 5, the reviewer has entirely discounted the affidavits of Captain McFerren (Ex. 1) and 1st Lieutenant Zamperini (Ex. 2). The affidavit of Captain McFerren attributes the jabbing of PW Nyrady with a bayonet and the slugging of four PW's to Murata. Commander Fitzgerald, who was PW Commander, whose affidavit (Ex. 5) seems to be a more detailed and considered document, attributes the jabbing of PW Nyrady, on a different date, to one Sukimoto. It is barely possible that this same PW was jabbed by both Murata and Sukimoto on two different occasions, but the similarity of the two events, as related in the two affidavits, raises a reasonable doubt as to whether Captain McFerren's recollection of the occurrence is correct. 1st Lieutenant Zamperini's affidavit is very general and seems to minimize the beatings administered by the accused. It is not only possible but entirely probable that in arriving at the sentence which it imposed on the accused, the Commission also disregarded this evidence. There remains, however, after discounting these affidavits, sufficient evidence in the testimony of Captain Godwin and the other affidavits received in evidence to show a pattern of continued cruel and unwarranted abusive treatment of PW's by the accused.

5. Recommendations.

There are no recommendations for clemency. The findings of guilty as to the specifications and the charge upon which the accused was tried are supported by the evidence and the sentence imposed by the Commission is not excessive. Accused was confined on 27 February 1947 and was tried and sentenced on 12 January 1948 to confinement at hard labor for a period of four (4) years. Under existing policy, due to the length of time the accused had been confined

Restricted
prior to the date of sentence, it is recommended that seven and one-half months of the sentence imposed be remitted. Sugamo Prison, Tokyo, Honshu, Japan is the appropriate place for confinement.

6. Action.

A form of action to carry out these recommendations into effect is hereto attached.

HARRY G. EVANS
Reviewer
Judge Advocate Section

I concur in general. The sentence of four years for serious mistreatments of more than a dozen persons reveals the exercise by the commission of leniency by comparison with those adjudged by other commissions in cases involving similar facts. Nevertheless, pre-trial confinement is in no way to be considered as confinement served in expiation for offenses of which an accused is later convicted. Therefore a reviewing authority should consider such restraint entirely separately from that adjudged by a commission. The blackest rogue is entitled to an early trial under the enlightened rules of civilized nations. When trials are postponed, as this one was, because of the great number of those awaiting justice, fair allowances should be made for undue pre-trial confinement regardless of the inadequacy of a sentence. This is all the more true since commissions are instructed that pre-trial confinement is not to be considered in adjudging sentences.

ALLAN R. BROWNE
Lt Colonel JAGD
Army Judge Advocate

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